

ORIGINAL

IN THE SUPREME COURT OF THE STATE OF MONTANA
NO. DA 09-0322

PLAINS GRAINS LIMITED PARTNERSHIP,)
a Montana limited partnership;)
PLAINS GRAINS INC., a Montana corporation;)
ROBERT E. LASSILA and EARLYNE A.)
LASSILA; KEVIN D. LASSILA and)
STEFFANI J. LASSILA; KERRY ANN)
(LASSILA) FRASER; DARYL E. LASSILA)
and LINDA K. LASSILA; DOROTHY LASSILA;)
DAN LASSILA; NANCY LASSILA)
BIRTWISTLE; CHRISTOPHER LASSILA;)
JOSEPH W. KANTOLA and MYRNA R.)
KANTOLA; KENT HOLTZ; HOTLZ FARMS,)
INC., a Montana corporation; MEADOWLARK)
FARMS, a Montana partnership; JON C.)
KANTOROWICZ and CHARLOTTE)
KANTOROWICZ; JAMES FELDMAN and)
COURTNEY FELDMAN; DAVID P. ROEHM)
and CLAIRE M. ROEHM; DENNIS N. WARD)
and LaLONNIE WARD; JANNY KINION-MAY;)
C LAZY J RANCH; CHARLES BUMGARNER)
and KARLA BUMGARNER; CARL W.)
MEHMKE and MARTHA MEHMKE; WALTER)
MEHMKE and ROBIN MEHMKE; LOUISIANA)
LAND & LIVESTOCK, LLC., a limited liability)
corporation; GWIN FAMILY TRUST,)
U/A DATED SEPTEMBER 20, 1991;)
FORDER LAND & CATTLE CO.; WAYNE W.)
FORDER and DOROTHY FORDER;)
CONN FORDER and JEANINE FORDER;)
ROBERT E. VIHINEN and PENNIE VIHINEN;)
VIOLET VIHINEN; ROBERT E. VIHINEN,)
TRUSTEE OF ELMER VIHINEN TRUST;)
JAYBE D. FLOYD and MICHAEL E. LUCKETT,)
TRUSTEES OF THE JAYBE D. FLOYD LIVING)
TRUST; ROBERT M. COLEMAN and HELEN)
A. COLEMAN; GARY OWEN and KAY OWEN;)

FILED

NOV 12 2009

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

RICHARD W. DOHRMAN and ADELE B.)
DOHRMAN; CHARLES CHRISTENSEN)
and YULIYA CHRISTENSEN; WALKER)
S. SMITH, JR. and TAMMIE LYNNE SMITH;)
MICHAEL E. HOY; JEROME R. THILL; and)
MONTANA ENVIRONMENTAL)
INFORMATION CENTER, a Montana)
nonprofit public benefit corporation,)

Appellants,)

vs.)

BOARD OF COUNTY COMMISSIONERS OF)
CASCADE COUNTY, the governing body of)
the County of Cascade, acting by and through)
Peggy S. Beltrone, Lance Olson and)
Joe Briggs,)

Appellees,)

and)

SOUTHERN MONTANA ELECTRIC)
GENERATION and TRANSMISSION)
COOPERATIVE, INC.; the ESTATE OF)
DUANE L URQUHART; MARY URQUHART;)
SCOTT URQUHART; and LINDA URQUHART,))

Appellees/Cross-Appellants.)

On appeal from the Montana Eighth Judicial District Court

Cause No. BDV-08-480

Honorable E. Wayne Phillips Presiding

**OBJECTION OF APPELLEES/CROSS-APPELLANTS SOUTHERN
MONTANA AND URQUHARTS TO NORTHERN PLAINS
RESOURCE COUNCIL INC., *ET AL.*, PETITION TO RECONSIDER**

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OBJECTION TO PETITION TO RECONSIDER

Appelles/Cross-Appellants Southern Montana Electric Generation and Transmission Cooperative, Inc. ("Southern Montana") and the Urquharts object to the Petition filed by Northern Plains Resource Council, Inc., *et al.* (collectively, "Northern Plains") and request the Court to summarily deny it.

In their Petition to Reconsider Order Denying Leave to File an Amicus Brief, dated November 9, 2009, Northern Plains asks the Court to reverse the November 3, 2008 Order denying them leave to appear as *amici curiae*. The Court concluded in the Order that Northern Plains' request for leave to appear as *amici curiae* was untimely because they waited until too late in the proceedings to request leave to appear. The Court also ruled that Northern Plains failed to make the requisite showing of exceptional circumstances for the late filing.

Contrary to Northern Plains' argument, the Court did not err in denying their request as untimely. For whatever reason, Northern Plains chose to wait until late in the proceedings, until the midst of the principal briefing on the appeal and the cross-appeal, to request leave to appear. The Court correctly recites in the Order the pertinent facts that Appellants Plains Grains filed their opening brief on August 17, 2009, and Southern Montana and the Urquharts filed their response and cross-appeal brief on September 11, 2009, which was the same day Northern Plains filed their request. As the Court concludes in the Order, consistent with its prior

decisions, Northern Plains was required to show exceptional circumstances for the late filing, which they failed to do. The request was therefore properly denied.

Northern Plains' argument that they sought to respond to Southern Montana and the Urquharts' motion to dismiss on grounds of mootness does not change this analysis. In challenging the Order, Northern Plains argues that they requested leave to file a brief responding to Southern Montana's motion to dismiss for mootness and that therefore the Court should have considered the status of briefing of this particular filing, as opposed to the posture of the appeal proceedings in general. However, there are no special exceptions or rules for particular types of filings or motions during an appeal and Northern Plains cite to none.

Further, Southern Montana filed the motion to dismiss for mootness on August 25, 2009, and the mootness argument was raised prior to that time in the cross-appeal filed on June 11, 2009. Northern Plains thus had ample notice of the mootness issue and should have sought leave to appear long before September 11, 2009, in the midst of briefing the issues before the Court.

Northern Plains further errs in arguing that Southern Montana had the opportunity to respond to its brief. (Northern Plains Pet. at 4). This cannot be the case since the Northern Plains' brief was lodged, not filed, with the Court.

CONCLUSION

The Petition is truly an eleventh hour request. The briefing is complete and oral argument is set for November 18, 2009. To allow Northern Plains to appear as *amici curiae* at this late stage in the proceedings is not permitted, as recognized by the Court in its Order, and would be highly prejudicial to Southern Montana, the Urquharts and Cascade County. The Petition should therefore be summarily denied.

DATED this 11th day of November, 2009.

UGRIN, ALEXANDER, ZADICK & HIGGINS, P.C.

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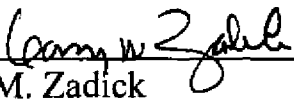
Great Falls, MT 59403

Attorneys for Appellees/Cross-Appellants

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 16(3) of the Montana Rules of Appellate Procedure, I certify that the foregoing brief is printed with a proportionately spaced Times New Roman test typeface of 14 points, is double spaced, and the word count calculated by Microsoft Word is not more than 1250 words, excluding certificate of service and certificate of compliance.

DATED this 11 day of November, 2009.



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CERTIFICATE OF SERVICE

I hereby certify that the foregoing was duly served upon the respective attorneys for each of the parties entitled to service by depositing a copy in the United States mails at Great Falls, Montana, enclosed in a sealed envelope with first class postage prepaid thereon and addressed as follows:

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